

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ROBERTO CLAPANO Y SALVADOR, ACCUSED-APPELLANT.*G.R. No. 106525. November 08, 1993*

Ponente: REGALADO, J.

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Accused-appellant Roberto Clapano seeks the review and reversal of his conviction by the Regional Trial Court, Branch 6, at Iligan City in Criminal Case No. 06-3766 for a violation of Section 15 of Article III, Republic Act No. 6425 (Dangerous Drugs Act of 1972, as amended). The lower court sentenced him to suffer the penalty of life imprisonment and to pay a fine of P20,000.00, without subsidiary imprisonment in case of insolvency.[1]

As the Court has always done, appellant shall be given the full measure of justice in passing upon the issue of his guilt or innocence, with a detailed explanation of how we arrived at our conclusions drawn from a thorough review and evaluation of the evidence on record.

Appellant's present predicament was judicially initiated by an information alleging that on or about November 14, 1991, in the City of Iligan, he "did then and there willfully, unlawfully and feloniously sell, transport and deliver and have in his possession one (1) aluminum foil containing Methamphetamine Hydrochloride or "Shabu" without being authorized by law." [2] On a plea of not guilty when arraigned on December 4, 1991, [3] he was thereafter tried in the court below with the assistance of counsel in all stages.

The factual backdrop of this case, as found by the trial court, started with police intelligence accounts which had pinpointed Cocogrove Area along Cabili Avenue in Iligan City as fast becoming the sanctuary of prohibited drug peddlers. It was ascertained to be the place where drug pushers were actively peddling their illegal merchandise to drug users. This alarming information prompted the 9th Narcotics Regional Field Unit stationed in the city to conduct a surveillance of drug pushers in preparation for buy-bust operations with the ultimate purpose of curbing drug addiction and apprehending drug pushers. [4]

The PNP NARCOM Field District Unit of Iligan City and Lanao del Norte was headed by SPO3 Renato Salazar, assisted by SPO1 Julieta Vega. These police officers had recruited civilian agents and informers to help them in a continuing campaign to identify drug pushers. On November 14, 1991, the NARCOM Unit received information from its confidential agent, Arnel Sistona, that there was a drug pusher selling shabu who frequented Keno's Restaurant on Cabili Avenue, [5] one of the main thoroughfares within the city proper. SPO1 Vega and Sistona immediately went to that place to determine the modus operandi of the pusher.

When Vega and Sistona arrived at Keno's Restaurant, Vega ordered Sistona to buy shabu. Sistona entered the restaurant leaving Vega outside to monitor and observe developments. At about 11:00 A.M., Sistona came out of the restaurant and, together with Vega, returned to the NARCOM office. Sistona had informed Vega that he could buy shabu at 2:00 o'clock that afternoon from appellant Roberto Clapano.

A team was organized, composed of Vega, SPO1 Generales, SPO3 Englatierra, SPO3 Duhaylungsod, and civilian

agents Celso Ponce and Sistona. While the team was being given their final instructions on the conduct of the buy-bust operations, SPO3 Salazar directed Duhaylungsod to secure the amount of P300.00. The peso bills were photocopied and subsequently authenticated by Fiscal Norma Siao of Iligan City Fiscal's Office.[6]

At about 1:40 P.M., upon arrival at Keno's Restaurant, Sistona entered the place and Vega positioned himself about five meters from the door thereof. Duhaylungsod and the other members of the team stayed at a place across Cabili Avenue. Shortly thereafter, Sistona came out of the restaurant with Clapano.[7] While Sistona and Clapano were talking, Vega watched them and later saw the poseur-buyer giving the money to Clapano. The latter then went inside the restaurant and, after a few minutes, he returned and handed to Sistona an aluminum foil.[8]

Sistona thereafter walked away and surreptitiously slipped the aluminum foil to Vega who immediately examined the contents. Vega then gave the pre-arranged signal to his companions who rushed towards appellant and identified themselves. Appellant was arrested and brought to the NARCOM office for investigation.[9]

The aluminum foil with its contents was forwarded to the local office of the National Bureau of Investigation, Region 10, for laboratory examination. On December 5, 1991, forensic chemist Bernabe P. Arenga submitted the following report:

"FINDINGS:

Weight of specimen. 0.1140 Gram

Laboratory examinations conducted on the above-mentioned specimen gave POSITIVE RESULTS for METHAMPHETAMINE HYDROCHLORIDE. x x x

REMARKS: METHAMPHETAMINE HYDROCHLORIDE is locally known as 'SHABU' which is included in the list of Regulated Drugs."[10]

Chemist Arenga explained in his testimony at the trial his findings and the method used to determine the composition of the specimen.

Appellant, in his defense, claims that at about 2:00 P.M. of November 14, 1991, he was outside Keno's Restaurant talking to a friend, Michael Yaoyao, when he was suddenly arrested by the NARCOM agents.[11] He denied that he sold shabu to Sistona. He likewise accused the NARCOM agents of manhandling him during the investigation. Clapano further alleged that his arrest and the shabu allegedly sold by him to Sistona was a "mere frame-up for unknown reasons." Insinuating a possible motive, according to the appellant there was an incident wherein he declined to testify against a drug user after being requested by the NARCOM agents.[12]

The defense also presented one Annette Madrazo who testified that while she was on her way to a friend, she saw appellant being surrounded by four persons and she heard that the latter was being arrested for drug pushing and for using marijuana. She also testified that she did not see anything being taken from appellant although his pockets were searched and turned inside out.[13]

After trial on the merits, the lower court held in its decision that "the prosecution was able to establish by clear and convincing evidence the selling transaction between the accused and Arnel Sistona involving the 'shabu' through the testimonies of SPO1 Vega and SPO3 Duhaylungsod who are with the NARCOM District Field Unit, Iligan City." [14] Hence, in its judgment promulgated on July 2, 1992, appellant was found guilty beyond reasonable doubt of the crime charged and sentenced as explained at the outset.

The basic assignment of error raised by the appellant in his brief is whether or not the prosecution was able to establish his guilt. A thorough and conscientious examination of the testimonial and documentary evidence presented in this case engenders moral certainty that they constitute that degree of proof which produces

conviction in an unprejudiced mind.

To begin with, the errors imputed by appellant refer to the credibility of witnesses and, in a long line of cases,[15] we have held that the determination of that credibility is the domain of the trial court. In our criminal jurisprudence, the rule is that when the issue is credibility of witnesses, appellate courts will generally not disturb the finding of the trial court, considering that the latter is in a better position to decide the question, having heard the witnesses themselves and observed their deportment and the manner of testifying during the trial.[16]

While this rule admits of certain exceptions, as when the trial court has plainly overlooked certain facts of substance and value which, if considered, might affect the result of the case,[17] the findings of the court a quo in the present case cannot qualify as such an exception, and appellant has miserably failed to give any reason why it should be considered as such. Two important considerations bolster the correctness of the findings of the trial court.

Firstly, the testimonies of the arresting officers are positive in character while that of appellant is negative. Thus, the former's testimonies necessarily prevail over the latter. Secondly, no improper motive has been imputed to the arresting officers. They are, therefore, presumed to have regularly performed their official duty in the absence of any evidence to the contrary. The fact that Clapano sold the shabu and received consideration therefor in a buy-bust operation was duly proved by the testimony of SPO3 Julieta Vega and amply corroborated by the other members of the NARCOM team.

The defense would consequently like to subvert the testimonies of the other police officers, saying that they were quite far from the place where Clapano and Sistona consummated the illicit sale. In *People vs. Collantes*,[18] where the appellant contended that the testimonies of the police officers were hearsay, this Court held that said testimonies of the two policemen-companions were not hearsay even though they had to necessarily watch the buy-bust operation from a distance, otherwise their close proximity to the operation would have given it away. They were there merely to watch the transaction surreptitiously, to act furtively, and to close in only when the opportunity arose.

The narration of the incident by the prosecution witnesses is far more worthy of belief coming as it does from law enforcers who are presumed to have regularly performed their duty. In fact, the testimony of defense witness Annette Madrazo did not contradict the version of the police. When Madrazo said that "nothing was recovered from the accused during the arrest," it corroborated the testimony of Vega that after appellant received the marked money from Sistona, Clapano went inside the restaurant and reappeared after a while, which fact was evidently the reason why the marked money was not with appellant when he was arrested thereafter.

Appellant likewise insisted that he was just a victim of a frame-up but he, however, failed to present any evidence to substantiate his claim. In a number of cases, we held that such a defense which is often imputed to the police officers requires stronger proof because of the presumption that the public officers acted in the regular performance of their official duties.[19] Nothing in the records suggests that the testimonies of the NARCOM agents were motivated by any reason other than their mission to curb drug abuse. As a matter of fact, appellant himself even testified that he does not know of any reason why the police would maliciously concoct a case against him.[20]

During the trial of the case, appellant claimed that he was just talking to a certain Michael Yaoyao when he was arrested by the NARCOM agents. It is significant, though, that the defense failed to present Yaoyao who could have easily corroborated the story of Clapano. Neither was such non-presentation of Yaoyao duly explained nor accounted for. Ineluctably, therefore, such defense of an alleged frame-up appears to be an afterthought conceived in desperation.

Appellant also claims that the failure to present the poseur-buyer/informer and the marked money is a crucial debacle to the prosecution's case. That non-presentation of the informer as a witness is not fatal. The determination of who should be utilized as prosecution witnesses is addressed to the sound discretion of the prosecutor handling the case. As the prosecutor had other witnesses who could sufficiently prove the criminal operations of appellant, he could dispense with the informer's evidence which would have been merely corroborative.[21] The testimony of Sistona is not indispensable in view of the testimony of two prosecution witnesses who were members of the narcotics team which conducted the buy-bust operation. The testimony of SPO3 Vega is sufficient since he saw the whole incident a short distance from the side of the doorway of Keno's Restaurant, approximately five meters away from where Sistona and appellant consummated the sale.

The fact that the money given to appellant was not presented in court does not militate against the prosecution's case where there is an un rebutted testimony of an eyewitness who saw the actual handling over of the shabu in exchange for the money. This Court has consistently ruled that the absence of the marked money does not create a hiatus in the prosecution's evidence.[22]

Finally, the appellant argues that his right against unreasonable search and seizure has been violated by the NARCOM agents. We need merely quote the refutation submitted by the Solicitor General on this score:

"The contention lacks merit for the seizure of the aluminum foil containing shabu through entrapment is sanctioned by law.

"There is entrapment when a police officer employs ruses and schemes to ensure the apprehension of the criminal while in the actual commission of the crime (*Araneta vs. CA*, 142 SCRA 534). As borne (out) by the evidence, the entrapment laid out by the NARCOM team, through a buy-bust operation with one member of the police team posing as a buyer of the prohibited drug and which (led) to the arrest of the appellant in flagrante delicto is in accordance with the foregoing rule. And, since entrapment is not a defense and neither is it prohibited and contrary to law, appellant's conviction is proper (*People vs. Lu Chua*, 56 Phil. 44)."[23]

WHEREFORE, the judgment of the court a quo is **AFFIRMED**, with costs against accused-appellant.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Nocon, and Puno, JJ., concur.

[1] Original Record, 63; per Judge Valerio M. Salazar.

[2] *Ibid.*, 1.

[3] *Ibid.*, 14.

[4] *Ibid.*, 3.

[5] Brief for the Plaintiff-Appellee, 2; Rollo, 76.

[6] TSN, February 14, 1992, 5-7, 73-75; Exhibit "E".

[7] TSN, January 14, 1992, 36-39.

[8] *Ibid.*, *id.*, 43-45.

[9] *Ibid.*, *id.*, 45-47.

[10] Exhibit C; Original Record, 36.

[11] Brief for the Accused-Appellant, 4-5; Rollo, 47-48.

[12] TSN, April 1, 1992, 4-5, 16.

[13] Ibid., February 26, 1992, 4.

[14] Original Record, 61.

[15] *People vs. Tejada*, 170 SCRA 497 (1989); *People vs. Vilorio, Jr.*, 191 SCRA 777 (1990); *People vs. Gerones*, 193 SCRA 263 (1991); *People vs. Linsangan*, 195 SCRA 784 (1991).

[16] *People vs. Pascual*, 208 SCRA 393 (1992).

[17] *People vs. Arenas, et al.*, 198 SCRA 172 (1991).

[18] 208 SCRA 853 (1992).

[19] *People vs. Macuto*, 176 SCRA 762 (1989); *People vs. Blas*, 209 SCRA 339 (1992); *People vs. Lique*, 212 SCRA 288 (1992).

[20] TSN, April 1, 1992, 15.

[21] *People vs. Alerta, Jr.*, 198 SCRA 656 (1991); *People vs. Rumberal*, 200 SCRA 194 (1991).

[22] *People vs. Sanchez*, 173 SCRA 305 (1989); *People vs. Marcos*, 185 SCRA 154 (1990); *People vs. Del Pilar*, 188 SCRA 37 (1990); *People vs. Tandoy*, 192 SCRA 28 (1990); *People vs. Alerta, Jr.*, *supra*.

[23] Brief for the Appellee, 10; Rollo, 84. See also *People vs. Lique*, *supra*.

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